

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

**KENNETH EADY and JULIE
EADY,**

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Plaintiffs,

v.

CIVIL ACTION NO.:

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**MEDICAL DEPOT, INC. d/b/a
DRIVE DEVILBISS HEALTHCARE,**

Defendant.

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COMPLAINT

1. The Plaintiff, Kenneth Eady, is an adult resident citizen of Clay County, Lineville, Alabama.

2. The Plaintiff, Julie Eady, is an adult resident citizen of Clay County, Lineville, Alabama. Julie Eady is the wife of the Plaintiff, Kenneth Eady.

3. The Defendant, Medical Depot, Inc., d/b/a Drive DeVilbiss Healthcare (hereinafter referred to as "Defendant DeVilbiss") is a foreign corporation by virtue of its being incorporated in the state of Delaware and having its headquarters located in Port Washington, New York. Defendant DeVilbiss sold, delivered, distributed, designed, fabricated, assembled, altered, manufactured, and/or instructed/directed the manufacture of the forearm crutch made the basis of this lawsuit. Upon information and belief, the Defendant is not licensed to do business in the state of Alabama where the subject forearm crutch was purchased and paid for with Alabama Medicare funds.

STATEMENT OF JURISDICTION

4. The Plaintiffs, Kenneth Eady and Julie Eady, are citizens of the state of Alabama.

The Defendant is a corporation incorporated under the laws of the state of Delaware with its principal place of business in the state of New York. The amount in controversy, with interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

VENUE

5. Under 28 U.S.C. § 1391(b), venue in the Eastern Division of the Northern District of Alabama is proper due to a substantial part of the events giving rise to the claim occurring in Clay County, Alabama. Mr. Eady was at home in Clay County when the subject forearm crutch malfunctioned, causing his injuries.

STATEMENT OF THE FACTS

6. In or around January of 2016, the Plaintiff, Kenneth Eady, was prescribed a forearm crutch to assist with mobility by Dr. Michael T. Robinson of Roanoke, Alabama, Mr. Eady's primary physician. The prescription for Mr. Eady's forearm crutch was filled by H&M Drugs in Wedowee, Alabama and Mr. Eady purchased the forearm crutch in or around January, 2016, using Medicare benefits. The forearm crutch provided to Mr. Eady pursuant to his doctor's prescription was sold, delivered, distributed, designed, fabricated, assembled, altered, manufactured by, and/or manufactured as directed/instructed by Defendant DeVilbiss.

7. On or about October 26, 2016, while Mr. Eady was using the forearm crutch at home, it buckled and broke in two, causing him to fall to the ground, injuring his left leg and causing pain to both hips and left leg, back, neck and left shoulder. Mr. Eady was taken by ambulance to Clay County Hospital where he was treated in the emergency department for his injuries. Mr. Eady's health and quality of life have deteriorated substantially since the subject fall, and continue to do so. In addition, due to the injuries he suffered on or about October 26, 2016, Mr. Eady's life expectancy has greatly diminished. Mr. Eady had previously used leg and foot braces

for bilateral foot drop and suffered a spinal cord injury in 1977 due to 27 foot fall from a tree stand. The fall limited Plaintiff's use of his legs; however, over the years, Mr. Eady had regained enough control of his legs and strength in his upper body to ambulate with the use of forearm crutches. Due to the subject incident, Mr. Eady has now completely lost the use of his left leg.

COUNT I:

LIABILITY OF DEFENDANT MEDICAL DEPOT, INC.,
D/B/A DRIVE DEVILBISS HEALTHCARE UNDER THE ALABAMA EXTENDED
MANUFACTURER'S LIABILITY DOCTRINE (AEMLD)

8. Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

9. At the time of the incident made the basis of this lawsuit and for a substantial period of time prior thereto, Defendant Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare was engaged in the business of selling, delivering, distributing, designing, fabricating, assembling, altering, manufacturing, and/or instructing/directing the manufacture of forearm crutches of the type being used by the Plaintiff, Kenneth Eady, at the time of the incident made the basis of this lawsuit throughout the United States, including the state of Alabama, for use by certain members of the general public. Defendant DeVilbiss, during said period of time and for valuable consideration, manufactured and/or instructed/directed the manufacture of the subject forearm crutch, to its specifications and then sold and/or distributed the forearm crutch which injured the Plaintiff Kenneth Eady.

10. At the aforesaid place and time, the forearm crutch which was in substantially the same condition as when it was manufactured, sold, and/or distributed by Defendant DeVilbiss, was being used by Plaintiff Kenneth Eady as an ordinary consumer in a manner that was foreseeable of such products. The forearm crutch was not reasonably safe when being used in a foreseeable manner, but to the contrary, it was defective and unreasonably dangerous to users of

the product when being so used in a foreseeable manner. The particular forearm crutch Plaintiff Kenneth Eady was using until its collapse and failure was 1) defective by design in that it was unreasonably or inherently dangerous, risky, or useless; or 2) defective as a result of manufacturing deficiencies because of inferior workmanship and/or inferior or lessor quality materials; or 3) defective for some other reason presently unknown to Plaintiff, such as improper assembly.

11. The foregoing wrongful conduct of Defendant DeVilbiss was a proximate cause of Plaintiff Kenneth Eady's injuries and renders said Defendant liable to Plaintiffs pursuant to the Alabama Extended Manufacturer's Liability Doctrine (AEMLD).

WHEREFORE, the Plaintiffs demand judgment against Defendant Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare, for compensatory and punitive damages in a sum to be established by the jury, and the costs of this proceeding.

COUNT II:
NELGIGENCE AND/OR WANTONNESS OF DEFENDANT MEDICAL DEPOT, INC.,
D/B/A DRIVE DEVILBISS HEALTHCARE

12. Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

13. The Defendant, Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare, negligently and/or wantonly sold, delivered, distributed, designed, manufactured, fabricated, assembled, altered, and/or instructed/directed the manufacture of the subject forearm crutch. As a result of this negligent and/or wanton conduct, the Plaintiff, Kenneth Eady was caused to suffer serious injuries.

WHEREFORE, the Plaintiffs demand judgment against Defendant DeVilbiss for compensatory and punitive damages in a sum to be established by the jury, and the costs of this proceeding.

COUNT III:
BREACH OF WARRANTY BY DEFENDANT

14. Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

15. The Defendant, Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare, expressly and/or impliedly warranted that the subject forearm crutch made the subject of this lawsuit was reasonably fit and suitable for the purposes for which it was intended to be used. Plaintiffs aver that Kenneth Eady was a beneficiary of this warranty by the Defendant. Plaintiffs aver that said Defendant breached said express and/or implied warranties in that the said forearm crutch was not reasonably fit and suitable for the purposes for which it was intended to be used but, on the contrary, the said forearm crutch was in a dangerously defective and unsafe condition.

16. As a proximate consequence of the Defendant's said negligence and/or wantonness, the Plaintiffs were caused to suffer serious injuries.

WHEREFORE, the Plaintiffs demand judgment against Defendant Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare for compensatory and punitive damages to be established by a jury, and the costs of this proceeding.

COUNT IV:
LOSS OF CONSORTIUM

17. The Plaintiffs reaver and reallege all of the allegations in the preceding paragraphs as if set out in full herein.

18. At the time of the incident made the basis of this Complaint and at present,

Plaintiff Julie Eady, was the wife of Plaintiff Kenneth Eady. As a result of the serious injuries to her husband, Julie Eady has lost the consortium, support, services, companionship, and affection of her husband.

WHEREFORE, Plaintiff Julie Eady demands judgment for compensatory and punitive damages against Defendant Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare in an amount to be determined by the jury, plus the cost of this action.

Done on this the 13th day of June, 2017.

/s/Randall S. Haynes
Randall S. Haynes (ASB-2865-A52R)

/s/Taylor A. Pharr
Taylor A. Pharr (ASB-8611-D84S)
Attorneys for Plaintiffs

OF COUNSEL:
MORRIS, HAYNES, WHEELS,
KNOWLES & NELSON
131 Main Street (35010)
Post Office Box 1660
Alexander City, Alabama 35011-1660
Telephone: 256-329-2000
Facsimile: 256-329-2015
Email: rhaynes@mhhlaw.net
Email: tpharr@mhhlaw.net

DEFENDANT TO BE SERVED BY CERTIFIED MAIL AS FOLLOWS:

Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare
99 Seaview Boulevard
Port Washington, New York 10050

PLAINTIFFS DEMAND A TRIAL BY STRUCK JURY ON ALL CAUSES IN THE ABOVE COMPLAINT.

/s/Randall S. Haynes
Of Counsel